

In the Matter of WALGREEN Co.¹ and WHOLESALE AND CHAIN DRUG
WAREHOUSE EMPLOYEES UNION, LOCAL 21704

Case No. R-1362.—Decided October 9, 1939

Warehousing and Candy Manufacturing Industries—Investigation of Representatives: question concerning representation: refusal of Company to recognize petitioning union as exclusive bargaining agency of unit claimed to be appropriate by the union; oral contract between Company and rival union, of no definite duration, no bar to petition for investigation—*Unit Appropriate for Collective Bargaining:* past bargaining on behalf of all employees; clerical employees, and other employees in the warehouse division who are eligible to other unions affiliated with same parent body as petitioning union, may properly be included in single unit with other employees in warehouse division; employees in warehouse division held sufficiently distinct from employees in candy-manufacturing division to constitute a separate unit; determining factor is desire of employees in warehouse division; elections to determine—*Elections Ordered:* among employees in warehouse division, and among employees in candy-manufacturing division.

Mr. Hyman A. Schulson, for the Board.

Mr. George E. Arthur, by *Mr. Julian A. Tishler*, and *Mr. Aaron N. Libman*, of Chicago, Ill., for the Company.

Mr. Joseph M. Jacobs, *Mr. Archie L. Berman*, and *Mr. Harry U. Bernstein*, of Chicago, Ill., for Local 21704.

Mr. Thomas Mason and *Mr. Leo J. Hassenauer*, of Chicago, Ill., for the Association.

Mr. Louis A. Roland, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

On January 11, 1939, Wholesale and Chain Drug Warehouse Employees Union, Local 21704, herein called Local 21704, filed with the Regional Director for the Thirteenth Region (Chicago, Illinois) a petition and on March 22, 1939, an amended petition, both petitions alleging that a question affecting commerce had arisen concerning the

¹ Improperly designated in the pleadings as "Walgreen Drug Stores." At the hearing the pleadings were amended to designate the Company correctly.

representation of employees of Walgreen Co., Chicago, Illinois, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On March 7, 1939, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On March 23, 1939, the Regional Director issued a notice of hearing, and on March 27, 1939, and again on March 31, 1939, notices of postponement of hearing. Copies of each of these notices were duly served upon the Company, Local 21704, and upon Chicago Drug Workers Association, Inc., herein called the Association, a labor organization claiming to represent employees directly affected by the investigation.

Pursuant to the notices, a hearing was held on April 18, 19, 20, 21, 22, 24, 25, 26, and 27, 1939, at Chicago, Illinois, before P. H. McNally, the Trial Examiner duly designated by the Board. The Board, the Company, Local 21704, and the Association were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. After the hearing, briefs were filed with the Board by the Company, Local 21704, and the Association. Pursuant to notice a hearing was held before the Board at Washington, D. C., on September 19, 1939, for the purpose of oral argument. The Company, Local 21704, and the Association appeared by counsel and all participated in the oral argument. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Walgreen Co. is an Illinois corporation with its principal offices in Chicago, Illinois. It owns and controls about 22 subsidiary corporations and itself operates 297 drug stores in various States of the United States, 81 of which are located outside Illinois, and 3 warehouses, 2 of which are located outside Illinois. The only plant affected by this proceeding is the Company's Chicago warehouse.

The Chicago warehouse has a warehouse division and a candy division. In the warehouse division, the Company is engaged in warehousing activities complementary to the general business of retail drug stores, including the receiving, storing, packing, repacking, and shipping of drug products, cosmetics, tobacco products, fountain equipment and supplies, electrical goods, and related products. In the candy division, candy, fountain syrups, and jellies are manufactured.

During the year 1938 the value of the raw materials, products, and equipment purchased by the Company for its Chicago warehouse totaled approximately \$18,000,000, about 84 per cent of which represented raw materials, products, and equipment shipped to the warehouse from sources outside Illinois. During the same period, the Company shipped from its Chicago warehouse to points outside Illinois products equal in value to about \$6,800,000, or approximately 35.8 per cent of its total shipments of products which had been stored, packed, or manufactured at this warehouse. Products manufactured at the Chicago warehouse are sold and shipped to 999 customers located outside Illinois.

In January 1939 approximately 500 non-supervisory employees were listed on the pay rolls of the Chicago warehouse.

II. THE ORGANIZATIONS INVOLVED

Wholesale and Chain Drug Warehouse Employees Union, Local 21704, is a labor organization affiliated with the American Federation of Labor. It admits to its membership employees of the Company's Chicago warehouse engaged in general warehousing operations, excluding supervisory and clerical employees, watchmen, and employees eligible to membership in other labor organizations affiliated with the American Federation of Labor.

Chicago Drug Workers Association, Inc., is an unaffiliated labor organization admitting to its membership all employees of the Company's Chicago warehouse, excluding supervisory employees, watchmen, and employees in the personnel department.

III. THE QUESTION CONCERNING REPRESENTATION.

Beginning in the spring of 1937 and until the time of the hearing, the Association has bargained collectively with the Company on behalf of the Company's employees of both divisions of the Chicago warehouse. No written contract, however, has ever been entered into between the parties and there is dispute as to whether the Company orally agreed to recognize the Association as the exclusive bargaining agent for all the employees or as the bargaining agent for its members only. In any event, no duration of time was specified for

the continuance of the verbal agreement. This agreement is not, nor does the Company or the Association claim it to be, a bar to a petition for investigation and certification of representatives.

In December 1938 Local 21704, claiming to represent a majority of employees in its proposed bargaining unit, requested bargaining conferences with the Company. After several conferences had been held, the Company finally refused, in January 1939, to recognize Local 21704 as the exclusive bargaining representative of employees in specified departments because of disagreement over the appropriate unit. In an "answer" filed with the Board, the Company admits that it refuses to recognize Local 21704 as the sole bargaining representative of employees in the unit proposed by it.

We find that a question has arisen concerning the representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The Company's Chicago warehouse is housed in a large two-story building. About one-fourth to one-third of the area of the first floor is occupied by the candy-manufacturing division. The rest of the building is occupied by various departments of the warehouse division, devoted to warehousing operations.

At the hearing, Local 21704, the Association, and the Company stipulated that employees in the personnel department, watchmen, and supervisory employees should be excluded from any unit found to be appropriate by the Board. We see no reason to depart from the stipulation in this respect.

Both the Association and the Company claim that all the remaining employees in the Chicago warehouse constitute a single appropriate bargaining unit. Local 21704, on the other hand, contends, in general, that the receiving, shipping, packing, and order-filling employees of the warehouse division alone constitute an appropriate unit. Local 21704 desires to exclude all employees in the candy division, clerical employees, and maintenance and service employees in the warehouse division who are eligible to membership in other unions affiliated with the American Federation of Labor.

Until the time of the hearing employees in all divisions and departments of the warehouse have been represented by the Association in collective bargaining with the Company. Since its formation in the spring of 1937, the Association, through its grievance committee, has conferred with the Company on at least 25 occasions and has, as a result of its bargaining, secured a seniority agreement, increases of salary in about 30 individual cases, minimum wage scales in various departments, compensation for overtime by reduction in the number of hours required in the ensuing 2-week period, and physical changes in the plant.

Clerical employees. Local 21704 desires to exclude from any unit in the warehouse division, all employees properly classifiable as clerical, for the reasons that they are not eligible to membership in Local 21704 and their interests differ from those of the other employees. On this basis Local 21704 would exclude all employees in the stockroom billing, stockroom inventory, stockroom office, and scanners and full-writers departments, as well as those employees in other departments of the warehouse division who are essentially clerical, such as pricers, clerks of various sorts, stenographers, typists, comptometer operators, card pickers, and card punchers. The record, however, discloses considerations which persuade us to the view, more in accord with that of the Association and the Company, that all these clerical employees may appropriately be included in a single bargaining unit with the larger group of employees in the warehouse division.²

At the outset it should be noted that the clerical employees cannot be differentiated from the employees included in the unit proposed by Local 21704 with respect to wages, hours, or working conditions. Although clerical employees are paid on a salary basis, some of the employees in the proposed unit of Local 21704 are likewise paid on a salary basis; nor is there any marked difference in the amount, as distinguished from the manner of computation, of compensation. The vast majority of employees, both clerical and otherwise, work a uniform number of hours, under uniform physical conditions of employment.

The functions of the clerical employees are, moreover, intimately related to the functions of the other employees engaged in warehousing operations, and there is frequently an overlapping of functions. Thus the pricers in various departments of the warehouse division, charged with the duty of pricing all items in orders filled by the warehouse, work in close cooperation with other warehouse employees, as, for example, the packers. The movement of merchandise through the warehouse fluctuates with the speed with which the pricers do their work. In addition, at least 12 of the 14 pricers regularly perform

² Cf. *Matter of The B. F. Goodrich Company and United Rubber Workers of America*, Local No. 43, 3 N. L. R. B. 420.

other functions in addition to pricing, such as checking orders, unpacking merchandise in the receiving room, and packing merchandise on the floor. Thus too, the scanners and the full writers facilitate the picking of orders, the scanners by locating the items in the various parts of the warehouse and routing the orders, the full writers by separating full case items from other items of the order and sending them to the specialized full-case pickers. When work of this kind no longer remains to be done, the scanners and full writers also perform other functions such as piling merchandise in the stockroom. This interrelationship and overlapping of functions likewise applies in a lesser or greater degree to the other clerical employees sought to be excluded by Local 21704. All clerical workers may be at times called upon by the superintendent of warehousing operations to assist, when there is need, in packing, wrapping, and other warehousing operations. It would, moreover, be anomalous to exclude these employees and, as desired by Local 21704, include the checkers, most of whom perform both clerical and manual work and some of whom have predominantly clerical duties.

Under all the circumstances we find that all clerical employees may properly be included in a bargaining unit with other employees in the warehouse division.

Employees eligible to membership in other A. F. of L. unions. Local 21704 also desires to exclude from any unit in the warehouse division, carpenters, painters, engineers, elevator operators, electrical workers who repair radios in the radio-service department, and cooks and dishwashers in the cafeteria department. In a restatement of its position submitted at the hearing for oral argument, Local 21704 appears to agree to the inclusion of employees in the radio-service department. The chief reason advanced for the exclusions is that these employees are eligible to join, and are under the jurisdiction of, other labor organizations affiliated with the American Federation of Labor. There is no evidence that any other union affiliated with the American Federation of Labor ever purported to represent any of these employees. In view of the close relationship of functions or interests existing between these and other employees of the warehouse division, in view of the fact that all the work of the electrical workers and some of the work of the elevator operators cannot be distinguished in character from the work of merchandise-handling employees agreed by both unions and the Company to be properly in the unit, and in view of the anomaly involved in including porters who do cleaning work but handle no merchandise (whom both unions and the Company desire to include), and excluding carpenters, painters, engineers, and cafeteria workers, we believe that all these employees may properly be included in a single unit along with all other employees in the warehouse division of the plant.

For similar reasons, we also believe it proper to include therein two employees in the stockroom miscellaneous department, desired to be excluded by Local 21704, namely, the matron in the ladies' locker room, and the clerk in the employees' store who receives orders from, and picks, wraps, and sells merchandise to, company employees.

Candy-division employees. The candy division of the Company's Chicago warehouse, located on the first floor of the building, is composed of the office, marmalade, candy-making, supervision, cellophane, engineer, porter, syrup, dipping, and packing departments. Local 21704 desires that a separate unit be established of only warehouse-division employees, whereas the Association and the Company urge that both divisions constitute a single appropriate unit.

As opposed to the warehouse division, engaged solely in warehousing operations, the candy division is engaged solely in the manufacture of candy, fountain syrups, jellies, and similar products. The two divisions are not interdependent in operation; the one can function if the other has ceased functioning, and in fact, at the time of the hearing, the candy division had completely suspended operations, while new equipment was being installed, without affecting the normal operation of the warehouse division. Direct supervision over each division is exercised by different supervisory officials. Moreover, the variant nature of the business of each division is reflected in the fact that the warehouse division, relatively stable in operation, has a 3-per cent turn-over of employees as compared to the huge fluctuations in operation of the candy division, which during its peak seasons at Christmas, Easter, and Mother's Day employs 250 to 275 employees and in its slack season employs about 100 employees or less. During the summer of each year, the candy division closes down completely for a short time and engages no employees. At no time does the warehouse division completely cease operations. Approximately 75 to 80 per cent of the employees in the candy division are women, whereas well over 90 per cent of the employees in the warehouse division are men. Whereas employees are frequently transferred within the warehouse division from one department to another, transfers of employees between the divisions are rare. The seniority lists which the Company agreed to maintain as a result of the Association's efforts are separate, there being one for the candy division and one for the warehouse division. Similarly, the constitution and bylaws of the Association divide the employees into two general divisions for voting purposes, namely, a warehouse and a candy division. Thus, the employees of each division constitute a rather well-defined group.

On the other hand, the employees of both divisions work in a single building, under like conditions of employment, and, as a result of

deliveries from the candy division to the warehouse division, are in frequent contact with one another. Moreover, the Association has for about 2 years bargained for employees in both divisions. It is to be noted, however, that the agreement whereby the Company recognized the Association as either the exclusive bargaining agent for all employees or as the bargaining agent for its members only was merely an informal or verbal agreement, of no definite duration, specifying no terms relating to wages, hours, conditions of employment, or method of handling grievances.

In view of the facts described above, we feel that the warehouse division may appropriately be established as a separate unit or be combined in a single unit with the candy division.³ Under these circumstances we are of the opinion that the desires of the employees themselves should be determinative.⁴ For reasons which appear in Section VI, *infra*, the determination of their desires can best be made in elections which we shall direct. Upon the outcome of the elections will depend our ascertainment of the appropriate unit or units herein.

We shall, therefore, order an election to be held among all the employees of the warehouse division of the Company's Chicago warehouse, including the city packers, stock fillers, out-of-town checkers and loaders, out-of-town packers, order pickers, city full pickers, out-of-town full pickers, chute, bar goods, cafeteria, carpenters and painters, cigar, clock repair, engineers, fountain supply, porters, radio service, return goods, stockroom agency, stockroom billing, stockroom inventory, stockroom office, stockroom miscellaneous, out-of-town packing, receiving, scanners and full writers, stockroom stockmen, and night-loaders departments, whether paid weekly or semi-monthly, but excluding supervisory employees, watchmen, and employees in the personnel department, to determine whether they desire to be represented by Local 21704, or by the Association, or by neither.

We shall order a further election among all the employees in the candy division of the Company's Chicago warehouse, including the office, marmalade, candy makers, supervision, cellophane, engineers, porters, syrup, dipping, and packing departments, whether paid weekly or semi-monthly, but excluding supervisory employees and watchmen, to determine whether or not they desire to be represented by the Association. We shall certify the union, if any, designated by a majority of the employees within each election unit as the exclusive representative thereof. If the Association should win both elections, we shall certify it as the exclusive representative of both election units combined.

³ See *Matter of Union Premier Food Stores, Inc., etc.* and *United Retail & Wholesale Employees of America, etc.*, 10 N. L. R. B. 370, and 11 N. L. R. B. 270.

⁴ *Matter of The Globe Machine and Stamping Co. and Metal Polishers Union Local No. 3, etc.*, 3 N. L. R. B. 294.

VI. THE DETERMINATION OF REPRESENTATIVES

Both Local 21704 and the Association introduced into evidence membership application cards, the Local also introducing into evidence cards signifying resignations from the Association. Because of a mistaken supposition on the part of counsel for Local 21704 that all parties had stipulated in the record that the Board order an election and not certify on the basis of the record, the authenticity and dates of all the signatures on the cards of Local 21704 were not proven. The same is true with respect to the cards introduced by the Association. Counsel for the Company objected to the introduction of all the cards of both Local 21704 and the Association on the ground that they had not been proven as to date or authenticity of signature. The Trial Examiner admitted the cards of Local 21704 and of the Association into evidence under the impression that the parties had stipulated for an election and that the cards would not be used for the purpose of certification. Under the circumstances we find that the question concerning representation which has arisen can best be resolved by the holding of elections by secret ballot. We shall accordingly direct that elections by secret ballot be held.

During the hearing, all the parties stipulated that the Board, in determining the representatives of the employees, may use the following four pay rolls of the Company, introduced in evidence: the weekly warehouse division pay roll of January 11, 1939; the weekly candy-division pay roll of January 14, 1939; the semi-monthly warehouse and candy divisions pay roll of January 15, 1939; and the pay roll of the night loaders, employed in the warehouse division, of January 10, 1939. It was agreed that these pay rolls would not limit the number of persons who might be considered by the Board to be "employees" of the Company on the respective dates.

No reason appears in the record why a date later than those of the above pay rolls should not be used to determine eligibility to vote in the elections. We shall accordingly direct that those eligible to vote in each election will be those persons in the respective election units who were employed during the pay-roll period immediately preceding the date of this Decision and Direction of Elections, including employees who did not work during such pay-roll period because they were ill or on vacation, and employees who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause. At the time of the hearing, the candy division had entirely ceased operation while new machinery was being installed. If, at the date of this Decision and Direction of Elections, the candy division has not yet resumed operation, the eligible voters will, in accordance with the above, be those who were

employed in the candy division during the pay-roll period immediately preceding the date of cessation of operation, including employees who did not work during such pay-roll period because they were ill or on vacation, and employees who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSION OF LAW

A question affecting commerce has arisen concerning the representation of employees of Walgreen Co., Chicago, Illinois, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Walgreen Co., Chicago, Illinois, elections by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Thirteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among

1. All the employees of the warehouse division of the Company's Chicago warehouse, including the city packers, stock fillers, out-of-town checkers and loaders, out-of-town packers, order pickers, city full pickers, out-of-town full pickers, chute, bar goods, cafeteria, carpenters and painters, cigar, clock repair, fountain supply, porters, radio service, return goods, stockroom agency, stockroom billing, stockroom inventory, stockroom office, stockroom miscellaneous, out-of-town packing, receiving, scanners and full writers, stockroom stockmen, and night-loaders departments, whether paid weekly or semi-monthly; who were employed during the pay-roll period immediately preceding the date of this Decision and Direction of Elections, including employees who did not work during such pay-roll period because they were ill or on vacation, and employees who were then or have since been temporarily laid off, but excluding

supervisory employees, watchmen, employees in the personnel department, and employees who have since quit or been discharged for cause, to determine whether they desire to be represented by Wholesale and Chain Drug Warehouse Employees Union, Local 21704, affiliated with the American Federation of Labor, or by Chicago Drug Workers Association, Inc., for the purposes of collective bargaining, or by neither; and among

2. All the employees in the candy division of the Company's Chicago warehouse, including the office, marmalade, candy makers, supervision, cellophane, engineers, porters, syrup, dipping, and packing departments, whether paid weekly or semi-monthly, who were employed during the pay-roll period immediately preceding the date of this Decision and Direction of Elections, including employees who did not work during such pay-roll period because they were ill or on vacation, and employees who were then or have since been temporarily laid off, but excluding supervisory employees, watchmen, and employees who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Chicago Drug Workers Association, Inc., for the purposes of collective bargaining; provided that if the candy division has not resumed operation at the date of this Decision and Direction of Elections, the eligible voters will be all those who were employed in the candy division during the pay-roll period immediately preceding the date of cessation of operation of the candy division, including employees who did not work during such pay-roll period because they were ill or on vacation, and employees who were then or have since been temporarily laid off, but excluding supervisory employees, watchmen, and employees who have since quit or been discharged for cause.

MR. WILLIAM M. LEISERSON, concurring:

I agree that two separate ballots should be spread, (1) among the employees of the warehouse division, (2) among the employees of the candy division; but I am of the opinion that a definite finding should be made before the election is held that these two divisions constitute appropriate bargaining units.

MR. EDWIN S. SMITH, dissenting in part and concurring in part:

I would not conduct a separate election among the employees of the candy division but would include the warehouse and candy divisions in a single bargaining unit. The fact that bargaining has been established over a period of time in a particular unit argues against a present change in unit. Moreover, the history of bargaining by the Association prior to the appearance of Local 21704 on

the scene has not brought forth any claim that the interests of either the warehouse division or the candy division have been neglected in the bargaining process. Under the circumstances, I see no reason for determining a separate unit composed of the warehouse division.

If however, a single bargaining unit including the candy division is not found appropriate, as the majority holds, I agree with Chairman Madden's opinion that final determination of the bargaining unit or units should await the outcome of the separate elections.